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Railroad arbitration

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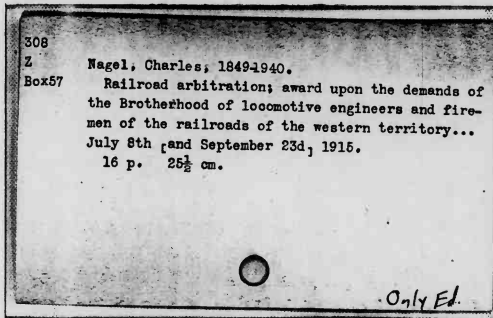
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Railroad Arbitration

AWARD UPON THE DEMANDS OF THE
BROTHERHOOD OF LOCOMOTIVE EN-
GINEERS AND FIREMEN OF THE RAIL-
ROADS OF THE WESTERN TERRITORY

by

CHARLES NAGEL

A MEMBER OF THE BOARD

JULY 8th, 1915



VERY considerable publicity has been given to the complaints which the representatives of the Brotherhoods expressed during the last few days of the session of the arbitrators, and after the award was announced; but very little attention has been devoted to the award itself. In view of the protracted hearing and the very exhaustive presentation of facts, it may be well to consider the substance of the award more in detail. Some few publications have defended it, others have called it a compromise, and still others have contented themselves with a discussion of the particular protests of the Brotherhoods. Very few attempts have been made to analyze the findings, and to determine how this award compares with others made under similar conditions; and to what extent this award meets the demands of the engineers and firemen upon some of the most material points at issue.

It is submitted that a consideration of the merits of the award should satisfy any unbiased mind that upon the whole the award is entirely fair; and, indeed, marks a very distinct advance, not only in the improvement of rules and conditions, but also with respect to the less pressing feature, namely, rates. From the standpoint of the Brotherhoods it will compare favorably with any award that has been made within the last few years. More especially does it constitute a long step forward towards harmonizing conditions, and towards laying a broad foundation for the protection of all the men concerned, upon which hereafter any needed improvements may be easily and consistently built.

Upon more careful inquiry it will be found that there were grave considerations which rendered it at least unwise to go farther at this time than the Board of Arbitration did go.

For illustration, the demands were presented very much like a lawsuit between private parties, in which nothing was to be determined beyond how much one side was to obtain and the other was to concede. The public which, on the one hand, is interested to have all employees (especially in a quasi-public enterprise) adequately remunerated, and which, on the other, should realize that such remuneration calls for correspondingly adequate contributions by it, was not directly represented in the presentation of the case.

Again, while the cause of the engineers and firemen was pressed with great earnestness, it was difficult to leave out of mind that a great number of other employees, upon whose efficiency and adequate compensation public security also depends, had apparently received no corresponding consideration. Indeed, it will be difficult for the railroads to justify increases in any other direction until something substantial has been done for these other employees, who form a very considerable part of the force of public carriers, and upon whose vigilance and loyalty the general public depends in a very large degree. In other words, the different classes of employees appeared to be very much out of line; and it seemed clear that a public carrier should have some regard for those who have been neglected, before too great an increase is made for those who had at least had the greater consideration in the past.

Perhaps the most remarkable illustration of inequality among employees was presented by the Brotherhoods themselves. No difficulty was more clearly impressed upon the members of the Board of Arbitration

than the one which grows out of the uncertainty of employment in the train service. While in practice the great majority of men serving the locomotive are reasonably sure of employment in some capacity, it was very clear that this is not true of those men who, in the process of reduction in the force, are sent to the extra firemen's list. These men are subject to call, and are fairly in the employ of the railroad at all times. At the same time, they are paid only when they are actually at work. Attention would naturally be attracted to their condition, and they would be in the mind of any one who was concerned to relieve the members of the train service whose compensation is necessarily uncertain, and, therefore, always reduced. One of the surprises of the hearing was that the men for whom the clearest case had been made out, and whose case served as a constant illustration of unfairness to the men, had no hope for relief, because no demand in their behalf had been formulated by the Brotherhoods, and the Board was not at liberty to consider anything outside of the demands that had been submitted.

Again, the saving clause in the agreement of submission proved extremely embarrassing in any attempt to make a marked advance, and, in some respects, even a reasonable adjustment. This saving clause read as follows:

"That any rates of pay, including excess mileage or arbitrary differentials, that are higher, or any rules or conditions of employment contained in individual schedules in effect October 10, 1913, that are more favorable to the employees than the award of said Board, shall not be modified or affected by said award."

In other words, the demand for standardization did not contemplate the lowering of any rate, rule or condition, however unreasonable it might be. Whatever was better for the men than the award, was retained; and whatever was lower than the award was raised. The inevitable result of the saving clause, therefore, was to drive the arbitrators to the adoption of a minimum standard.

It is true that comparatively good rates in many cases need not prevent fixing a fair standard of rates for all railroads. But when it is remembered that standardization included not only all the systems, but every kind of railroad, branches as well as main lines, that circumstance alone induced conservatism. Furthermore, the right to combine new rates with old rules, or old rates with new rules, presented possibilities of results, the contemplation of which necessarily induced the exercise of care. So complicated is this system of calculation, and so speculative the result of these combinations, that it will require a long period to have either railroads or men complete the calculations. And it is a safe prediction that even then their conclusions will differ seriously, and will in many instances require the final interpretation and decision of the Board. In other words, the actual new rates, expressed in dollars and cents, and the need for further increases, cannot be known until the possibilities and limits of combinations under the new award are established.

Again, the general financial situation in the country enjoined conservatism. While a common carrier should pay fair wages, regardless of its immediate condition, just as it should keep up its equipment so as to serve the public satisfactorily, it was at the same time unsafe to disregard altogether the fact that three of the main systems before the Board were

in the hands of receivers, and others did not appear to be beyond the possibility of a similar fate.

Since the primary demand was for uniformity of rates and rules in the entire Western territory, the weaker systems necessarily indicated the standard of the minimum allowances to be made. Indeed, the demand for uniformity unavoidably called for careful consideration of the rates and rules which had but recently been established by the arbitrations in the East. To establish and maintain fair conditions of competition, shippers' rates are fixed with that point in mind; and it will hardly be contended that employees' rules and rates can be safely adopted in disregard of that same principle.

The difficulty was brought out with particular force by the following circumstances: While six members of a Board of Arbitration were devoting five months to the hearing and determination of a wage case, one member of the Interstate Commerce Commission was conducting a hearing of the Western shippers' rate case in the same building. There was no relation between the two, and under our laws not even an effort could be made to reconcile the conclusions. Indeed, the award upon the demand for increased wages had to be made before any intimation could be given what the result of the rate hearing will probably be.

Obviously, the two inquiries are closely related, and the decision of the one should necessarily, in some measure, be predicated upon the other. It seemed impossible, in view of this situation, to accede to any radical departure from wage standards which had been agreed to partly in reliance upon past rate conditions, before it could be assumed that the Interstate Commerce Commission was prepared to embark upon a policy of general railroad improvement.

Still another embarrassment was presented by the fact that independent committees representing the Brotherhoods were endeavoring to secure legislative relief for the same conditions which the Board was asked to remedy. For illustration, while the increased labor and responsibility of engineers and firemen were established before the Board by testimony with respect to the constantly increasing length of trains, these committees were actively supporting measures before the legislature to limit the length of trains. In other words, the Board was asked to predicate its conclusion upon a state of facts which might be materially modified by law before the Board adjourned, or immediately after.

Notwithstanding these circumstances, which have been only superficially referred to, the award goes far to secure what the Brotherhoods really asked. Especially is this true when it is remembered that during the hearing it was expressly stated that the men were interested more in rules and conditions than they were in rates; and when it is recalled that as to rates the evidence produced was by no means as persuasive as the Brotherhoods had obviously hoped to make it. It was not possible to dismiss from mind the fact that during the hearing it was frankly admitted that if the exhibits of the railroads were true, the case of the Brotherhoods was lost; and the further fact that although every facility was offered by the Board to challenge the original documents upon which these exhibits were predicated, no successful attack upon them was made.

But apart from all that, an examination of the award will disclose very marked advances for the engineers and firemen; and, indeed, will show that, excepting more especially the question of through freight rates, and a few similar questions, most of the awards upon the demands submitted were adopted by a unanimous vote. This is essentially true of every article from VII to XVI, both inclusive. And it may be noted that these ten articles have to do more especially with the regulation of conditions and with the relief of the men from burdens against which they particularly protested; and upon which the greater stress was laid in the hearing.

This will at once be apparent when it is considered that these ten articles, so unanimously agreed to, embraced a demand for continuous time for engineers and firemen tied up between terminals; a demand for compensation when held away from home terminals; a demand for dead-heading; a demand for rules and rates for hostlers; a demand for a rule upon surprise tests; a demand for assistants for firemen; a demand for two firemen for the larger engines; a demand for the relief of firemen and engineers in connection with the care and handling of engines; a demand for official records of weights on drivers, etc.

It is also true that very material portions of the other six demands were adopted by a unanimous vote. For illustration, the demands for miles and hours in the passenger service and in the freight service were adopted unanimously as asked. With respect to the passenger service, the demand for overtime was modified, but was unanimously adopted.

Overtime in freight service was left by a vote of four to two, in accordance with the present practice, and in conformity with the rules made by the engineers' and firemen's arbitrations in the Eastern territory.

The important demand for wreck and mine and similar trains, giving that service the through freight rates and rules, was adopted unanimously.

The awards under demands three, four, five and six for local way-freight, switching service, preparatory time and terminal delay, were adopted by a vote of four to two.

In this connection, however, it must not be overlooked that the rate for local way-freight is made higher than it is in the East; and that the division in the Board arose more especially over a definition of local way-freight trains, which was lost, because it seemed that any attempt at a further definition would serve to confuse rather than to clarify. Again, in the switching service, a classification was adopted which was not embraced in the Eastern engineers' award, but was granted in the Eastern firemen's award; and an examination will show that again the rates predicated upon this classification are substantially higher for both engineers and firemen than those fixed by the Eastern awards. Preparatory time and terminal delay were disposed of in conformity with the Eastern awards, and, apparently, in accordance with the best principle which could safely be accepted.

The rates in through freight service and in passenger service were adopted by a vote of four to two. With respect to the latter, it is safe to say that there was no substantial objection to rates, and that the only seri-

ous demand not granted seemed to be that firemen on oil-burning engines should be put upon a par with firemen on coal burning engines.

The most serious objection no doubt arose with respect to through freight rates; but even where these objections were recorded, the rates allowed in many instances went beyond and never below the awards made in the Eastern territory. The classification of engines for all classes of service was adopted throughout, although the Eastern engineer's award had failed to do this; and in every instance, with one exception, when a departure was had from the Eastern awards (one of which had the approval of Mr. Phillips, a member of the Board of Mediation, and the other of Mr. Phillips, a representative of the Brotherhood of Firemen, who appeared as counsel before the Board in the case just decided), it was done to increase the rates above the Eastern awards. The only exception pertained to Article VIII, which was a demand to have men paid continuous time when held away from home terminals. In this instance, the hours adopted are less favorable than those contained in the Eastern firemen's award. This was done because conditions in the Western territory appeared to be different from those which obtained in the Eastern territory, and did not therefore seem to justify as favorable a rule.

Remembering that the fundamental demand in the entire controversy was that standardization or uniformity should be established, it seemed that a more radical departure could not be made without defeating one of the main purposes of the hearing. In this connection it may be remarked that Mr. Phillips, who had represented the firemen upon the Board in the Eastern award, and who appeared as counsel for the firemen in the Western hearing, did not, so far as the public is advised, join in either protest or criticism of the Western award.

But inasmuch as the award with respect to the conditions under which men are expected to work may be assumed to be acceptable, and since the essential complaint is directed to the rates fixed by the award, it may be well to institute a comparison between the several awards made in the East and the West, in order that it may be determined, with the figures of these several awards side by side, whether the Western Board of Arbitration, always having in mind the demand for uniformity, could with safety have gone farther than it did.

First: Taking the Eastern and Western awards for the engineers and placing them side by side, the following is the result: The Eastern award makes no classification of the engines as a basis for compensation; the Western award made a classification of engines substantially in compliance with the demands of the Brotherhoods. The Eastern award, therefore, contented itself with fixing the minimum rates as follows:

For engineers on passenger engines.....	\$4.25
For engineers in freight service.....	4.75
For engineers in switching service.....	4.10

The Western award fixed the classification of engines and the minimum rate according to the classification, as follows:

PASSENGER SERVICE.

The minimum rates of wages per day shall be:

	Engineers
Engines less than 80,000 lbs. on drivers.....	\$4.30
Engines 80,000 lbs. and less than 100,000 lbs. on drivers.....	4.30
Engines 100,000 lbs. and less than 140,000 lbs. on drivers.....	4.40
Engines 140,000 lbs. and less than 170,000 lbs. on drivers.....	4.40
Engines 170,000 lbs. and less than 200,000 lbs. on drivers.....	4.45
Engines 200,000 lbs. and less than 250,000 lbs. on drivers.....	4.45
Engines 250,000 lbs. and less than 300,000 lbs. on drivers.....	4.65
Engines 300,000 lbs. and less than 350,000 lbs. on drivers.....	4.80
Engines 350,000 lbs. and over on drivers.....	4.80
Mallet engines regardless of weights on drivers.....	5.00

FREIGHT SERVICE.

The minimum rates of wages per day shall be:

Engines less than 80,000 lbs. on drivers.....	\$4.75
Engines 80,000 lbs. and less than 100,000 lbs. on drivers.....	4.80
Engines 100,000 lbs. and less than 140,000 lbs. on drivers.....	4.85
Engines 140,000 lbs. and less than 170,000 lbs. on drivers.....	5.10
Engines 170,000 lbs. and less than 200,000 lbs. on drivers.....	5.30
Engines 200,000 lbs. and less than 250,000 lbs. on drivers.....	5.45
Engines 250,000 lbs. and less than 300,000 lbs. on drivers.....	5.60
Engines 300,000 lbs. and over on drivers.....	5.75
Mallet engines less than 275,000 lbs. on drivers.....	6.00
Mallet engines 275,000 lbs. and over on drivers.....	6.50

SWITCHING SERVICE.

Rates of Pay.

The minimum rate of wages per day of ten (10) hours or less; overtime pro rata on minute basis, shall be:

Engines less than 140,000 lbs. on drivers.....	\$4.25
Engines 140,000 lbs. and over on drivers.....	4.40

MALLET ENGINES.

Engines 275,000 lbs. or less on drivers.....	\$5.15
Engines over 275,000 lbs. on drivers.....	5.40

The impression was given that even the minimum rates of the Eastern award resulted in a substantial increase for a very large number of engines. But, obviously, the fixing of minimum rates for each class of engines in the West went very much farther as a means both of present increase and future guaranty. The difference in the switching service is particularly striking.

Second: With respect to the firemen, the Eastern award and the Western award adopted substantially the same classification. The Eastern award is as follows:

(a) PASSENGER SERVICE.

Weights or Locomotives in pounds on Drivers.

Less than 80,000 pounds.....	\$2.45
80,000 to 100,000 ".....	2.50
100,000 to 140,000 ".....	2.60
140,000 to 170,000 ".....	2.70
170,000 to 200,000 ".....	2.85
200,000 to 250,000 ".....	3.00
250,000 to 300,000 ".....	3.20
300,000 to 350,000 ".....	3.40
All engines over 350,000 lbs. on drivers.....	3.60
Mallet engines regardless of weight on drivers.....	4.00

FREIGHT SERVICE.

Less than 80,000 pounds.....	\$2.75
80,000 to 100,000 ".....	2.85
100,000 to 140,000 ".....	3.00
140,000 to 170,000 ".....	3.10
170,000 to 200,000 ".....	3.20
200,000 to 250,000 ".....	3.30
250,000 to 300,000 ".....	3.55
All engines over 300,000 lbs. on drivers.....	4.00
Mallet engines regardless of weight on drivers.....	4.00

(b) SWITCHING SERVICE.

Switch engine firemen on locomotives, weighing less than 140,000 lbs. on drivers, per day of ten (10) hours or less.....	\$2.50
Switch engine firemen on engines weighing 140,000 lbs. or over on drivers, per day of ten (10) hours (excluding Mallets \$4.00).....	2.60

Where two firemen are employed on a locomotive as a result of the application of Article 6 hereinafter, the rates of pay to each fireman shall be as follows:

Weight on drivers, 100,000 up to 250,000 lbs.....	\$2.75
Weight on drivers, over 250,000 lbs.....	3.00

(c) HOSTLERS.

Hostlers, per day of ten (10) hours or less.....	\$2.40
If hostlers are employed in handling engines between passenger stations, and round houses or yards, or on main tracks, they will be paid per day of ten (10) hours or less.....	3.25
If men are employed to assist hostlers in handling engines between passenger stations and round house or yard, or on main track, they will be paid per day of ten (10) hours or less.....	2.50

The Western award is as follows:

PASSENGER SERVICE.

The minimum rates of wages per day shall be:

	Firemen	Coal	Oil
Engines less than 80,000 lbs. on drivers.....	\$2.50	\$2.50	
Engines 80,000 lbs. and less than 100,000 lbs. on drivers.....	2.55	2.50	
Engines 100,000 lbs. and less than 140,000 lbs. on drivers.....	2.60	2.50	
Engines 140,000 lbs. and less than 170,000 lbs. on drivers.....	2.70	2.55	
Engines 170,000 lbs. and less than 200,000 lbs. on drivers.....	2.85	2.70	
Engines 200,000 lbs. and less than 250,000 lbs. on drivers.....	3.00	2.85	
Engines 250,000 lbs. and less than 300,000 lbs. on drivers.....	3.20	3.05	
Engines 300,000 lbs. and less than 350,000 lbs. on drivers.....	3.40	3.25	
Engines 350,000 lbs. and over on drivers.....	3.60	3.45	
Mallet engines regardless of weights on drivers.....	4.00	3.85	

FREIGHT SERVICE.

The minimum rates of wages per day shall be:

	Firemen	Coal	Oil
Engines less than 80,000 lbs. on drivers.....	\$2.75	\$2.75	
Engines 80,000 lbs. and less than 100,000 lbs. on drivers.....	2.85	2.75	
Engines 100,000 lbs. and less than 140,000 lbs. on drivers.....	3.00	2.85	
Engines 140,000 lbs. and less than 170,000 lbs. on drivers.....	3.20	3.05	
Engines 170,000 lbs. and less than 200,000 lbs. on drivers.....	3.45	3.30	
Engines 200,000 lbs. and less than 250,000 lbs. on drivers.....	3.70	3.55	
Engines 250,000 lbs. and less than 300,000 lbs. on drivers.....	3.90	3.80	
Engines 300,000 lbs. and over on drivers.....	4.00	4.00	
Mallet engines less than 275,000 lbs. on drivers.....	4.00	4.00	
Mallet engines 275,000 lbs. and over on drivers.....	4.25	4.25	

* Oil differential not to apply on engines weighing over 215,000 lbs. on drivers.

SWITCHING SERVICE.

Rates of Pay:

The minimum rate of wages per day of ten (10) hours or less; overtime pro rata on minute basis, shall be:

	Firemen
Engines less than 140,000 lbs. on drivers.....	\$2.70
Engines 140,000 lbs. and over on drivers.....	2.75

MALLET ENGINES.

Engines 275,000 lbs. or less on drivers.....	\$4.00
Engines over 275,000 lbs. on drivers.....	4.00

When two firemen are employed on a locomotive, they shall each be paid the rate for the class of engine next below.

HOSTLERS.

The minimum pay for Hostlers will be \$4.20 per day of 12 hours, or less, overtime pro rata. Only roundhouse employees who, in handling engines, are required to have a knowledge of main line train movements will come under this designation.

All other roundhouse employees handling engines during twenty-five (25) per cent, or more, of their daily assignment will receive \$3.00 for 12 hours, or less, overtime pro rata.

It may be assumed that the basis in miles and hours adopted in both awards for these rates in effect is the same; and it will be apparent, therefore, that the Western award was a very substantial improvement over the Eastern award in the interest of the Brotherhoods.

It is true that the Eastern engineers' award was severely arraigned during the hearing of the Western demands. Some of the criticism was couched in language well calculated to have members of the Board appreciate what their fate might be. But a close examination of the Eastern award, whatever the first impression might have been, necessarily confirmed the reputation which some of the members of that Board undoubtedly enjoy, and, more especially, that of Mr. Van Hise, who is credited with having done most of the work in connection with the Eastern award. Indeed, there is every reason to believe that however severely the East-

ern engineers' award has been criticized in public, the members of the Brotherhood do not hesitate to accept it as a very substantial improvement in their interest. And if this is true, there is no apparent reason for the heated criticism of the Western award. The Eastern firemen's award was not so severely criticized, although it is not easy to find sufficient ground for a distinction between the two; unless it be the fact that one of the arbitrators in the Eastern firemen's award who assigned it without protest, appeared before the Western Board as counsel for the Brotherhood of Firemen; his experience and fair-minded attitude throughout the hearing contributing very largely to a proper understanding of the real issues.

Comparison has been made with the conditions in the East, because in that territory the awards admit of such comparison. In some measure the rules and rates of the southeastern territory may furnish similar opportunity. But the conditions there are so different that the standards could clearly not have been accepted in their entirety. While the hours are short, and the rates for engineers are, comparatively speaking, higher, the rates for firemen and even for train crews, are generally lower. As a whole, for both engineers and firemen, the rates and rules of the Southeast would not have been acceptable. To accept them for engineers and to reject them for firemen, would have meant to disregard the considerations and conditions upon which the Railroads and the Brotherhoods have built up their system in the Southeast.

To repeat, no attempt is made to give the complete, or, indeed, the actual results of the Western arbitration. Neither side to the controversy was able at the time to state them with any degree of precision. The rates named are the minimum rates which engineers and firemen receive whenever they are called to work. How much more they may or do receive depends upon actual hours and miles made; and upon a combination of rules and rates, the exact effect of which no one will undertake to anticipate.

To sum up, the demands of the men embraced rules for improved conditions and for higher rates. The greater stress was laid upon the demands for improved conditions. These constituted the majority of the demands, and were substantially awarded. The demands for rates were, in large part, awarded; and, as allowed, are essentially better for the men than those named in the Eastern awards.

The precise results of the Western award cannot be known until experience has applied and solved all the possibilities of combinations between rules and rates, old and new. The period of one year for which the award is made will probably not be found too long to test out the practical effect of the award. But when that will have been done, the foundation has undoubtedly been laid in the award for fair, and intelligent consideration of any complaints of rates or rules that may then be presented by either the men or the railroads.

In the meantime, mere agitation on one side serves no better purpose than simple submission on the other. The settlement is for a year only. The essential question of what is right cannot be, and should not be, suppressed. The public is entitled to know whether the men have exaggerated their grievances; and whether the railroads have overstated the

consequences of the demands as presented, and of the award as made. The public may also want to know whether the railroads' yielding to pressure from one direction results in the railroads' neglecting just demands from another. This is the time to weigh these considerations, in order that public opinion may be prepared in time, instead of having it subjected to surprise a few months hence, after the time for fair and dispassionate consideration has passed, by a new demand for decision and action.

If other arbitrations are to be had, it may be well to have in mind some of the experiences which attended this one. Attention should, for illustration, be called to one difficulty under which the neutrals labor. As the Board is constituted, the responsibility practically falls upon two neutrals. The question is whether they can come to enough of an agreement to register any award. The record will show that the Chairman was more inclined than the writer to increased rates; as he was also more ready to place firemen on oil engines on a par with firemen on coal-burning engines, and to give firemen where two men are employed on one engine, each the same rate that particular class of engine would command in case it were handled by only one man. However, such differences were reconciled, and the Western award is certainly better for both engineers and firemen than the Eastern award. The Chairman not only signed the Western award, but very earnestly insisted that the Brotherhood representatives upon the Board should do as much. I hesitated to sign the award—not because I did not regard it as entirely fair, but because to my mind a mere majority award is little more than a postponement of the controversy.

These difficulties were considerably increased by the circumstance that neutral members have no opportunity to confer with any one outside of the Board. While the representatives of the Brotherhoods and of the Railroads were at liberty in fullest measure to consult their respective interests, the neutrals were at all times left to determine for themselves how much of the representations presented them in conference was disinterested, and how much was pressed upon them for what effect it might have. The record will disclose this situation. For illustration, the very first provision in the matter of passenger service was upon the first vote, supported only by the two neutrals; but after this record had been left to work its surprise, a motion by the member of the Brotherhoods to reconsider was made, and this particular provision was unanimously adopted.

Under these circumstances, it was for each neutral to estimate the weight of the testimony as best he could; and to consider every question where opportunity offered, in some measure at least, in the light of the conclusion which the several Eastern Arbitration Boards had reached in fixing rates and rules for engineers, for firemen and for conductors. To that extent at least each member could consult the wisdom and the experience of men who had given thoughtful consideration to these questions, one of whom was a member of the Board of Mediation which appointed the neutrals, and another a representative of the Locomotive Firemen who participated in the presentation of the case upon which the Western Board had to pass. The practical question is whether a Board of six members as now constituted is calculated to accomplish acceptable results, or whether some modification should be had.

Again, it should not be overlooked that our Board of Arbitration had the authority to make rules for the conduct of the hearing, which opportunity was not availed of. Perhaps it was wise not to attempt this before the first hearing; but certainly the need for such rules has been demonstrated by the proceedings before this Board. Without any attempt to control questions of relevancy, the form of questions, or the comments of counsel, the record necessarily grew to unwieldy proportions, and the time consumed and the expense incurred by both parties seems disproportionately large. It is submitted that the adoption of rules allowing of the widest practical latitude, but, at the same time affording some restraint, would contribute very materially to the success of future arbitrations.

Still further, I cannot refrain from expressing the conviction that no entirely satisfactory results will ever be possible, so long as arbitrators are restrained to consider only the demands of one side to a controversy. If the Railroads in this instance had real grievances, they should have been given a hearing with respect to them. If their grievances were not real, then the Railroads necessarily occupied the position of proprietors who had in the past denied just consideration to their men. This was also one of the questions about which each arbitrator was called upon to form his own opinion. But, obviously, the arbitrator's task would have been rendered much more easy and satisfactory, if each side had been given opportunity to present its demands, and to support them as best it could, in order that the merits might be fairly weighed.

In many respects the terms of the submission precluded a full and fair consideration of the real questions. As has been said, the most neglected men were not embraced in the demands, and therefore had to be denied relief. The Railroads referred to complaints upon which they could not insist, and which were by the terms of the submission, eliminated from the inquiry. Such a condition necessarily operated to obscure the issue. Especially was this true, as it became more and more clear that the system under which the roads and the men now work, is the result of interminable compromises and infinite refinements of construction. No one professes quite to understand it; but with varying degree each side searches for technical grounds—all too often, one to deny what is intended, the other to obtain what is not intended. Such a system makes for controversy; each award is a breeder of new arbitrations or disputes. It is confidently submitted that real equity for both sides should be sought in rules more simple and direct, than those which have resulted from a system of convenient compromise and endless sparring for technical advantage.

If, in the meantime, under the conditions described, the officers of the Brotherhoods seek a Congressional inquiry; that inquiry should be welcomed. It may lead to a better understanding of many of the difficulties herein referred to.

The mere question of the qualification or disqualification of a particular arbitrator may be interesting; but that question must be answered by the Board of Mediation and Conciliation who selected the neutral members, and, as is generally understood, succeeded in including those members to serve, because neither one of them could find an acceptable excuse to justify his escape from the unwelcome burden.

This is neither the time nor the place to discuss the personal comments which some of the leaders of the Brotherhoods have seen fit to express about me. An organization which is powerful enough to force a submission to arbitration in the form in which this one was agreed to, should perhaps be expected to proceed in drastic fashion against a mere arbitrator. But even so, it is well to remember that a good cause rarely profits by threats; that reluctant denial may be a better test of fair interest than unquestioning submission; and that even labor organizations may fall victims to methods, which they would have the public believe constitute the peculiar weakness of industrial oppressors.

No one who has seen and heard the locomotive engineers and firemen as witnesses can regard them with anything but respect and admiration. Mental alertness, physical soundness, and love of truth were almost universal characteristics. These men are undoubtedly qualified for an occupation of risk, hardship and responsibility; and no one would withhold from them any recognition within the bounds of reason and general justice.

On the other hand, the case of the Railroads was submitted with the manifest desire to place the facts before the arbitrators. The record speaks for itself. If mistaken deductions were drawn from the record, the remedy is easily had. In fact, the parties approaching their questions in a fair spirit, should be able to adjust many, if not all, differences without arbitration.

The most important question of all, however, is the fate of arbitration. If the Western award as made should be shown to be a mistake, and private adjustment proves impossible, then nothing should be easier than to have it remedied by the next arbitration. The foundation for such relief has in any event been broadly laid; and to that extent the award is unquestionably a distinct advance. If the award should be found to be essentially just, then arbitration has been vindicated. In no event should a vital principle for the adjustment of labor disputes be permitted to sink into disuse because in a particular instance one side or the other, with or without reason, registers a complaint.

THE WESTERN AWARD

THE INTERPRETATION OF THE AWARD UPON
THE DEMANDS OF THE BROTHERHOODS OF
LOCOMOTIVE ENGINEERS AND FIREMEN OF
THE RAILROADS OF THE WESTERN TERRITORY

By CHARLES NAGEL

A MEMBER OF THE BOARD

SEPTEMBER 23d, 1915

In an earlier statement I undertook to discuss some of the conditions which it seemed necessary to consider in making the award; and I also ventured the opinion that in many respects the engineers and firemen had made a distinct advance. The statement dealt altogether with the general considerations of the past and in no manner attempted to predict exact results or to interpret the terms of the award.

Since then the Board of Arbitration has again met, and has, in the shape of answers to questions submitted, to that extent given an interpretation of its own award in the manner provided by law. The proceedings of this last session so completely confirm the difficulties and the expectations which I had ventured to outline, that I propose now to comment briefly upon them.

There were submitted altogether 194 questions; and it is to be noted that they were all presented by the employees. It need hardly be said these questions embraced some duplications and that in a number of instances the decision in one case involved principles which were necessarily controlling in others. Nevertheless these 194 questions covered a large field, including fifteen articles of the award, and involving a wide range of elections and combinations of rates and rules.

One hundred and forty-nine questions out of one hundred and ninety-four were answered unanimously; which appears to argue that the members of the Board not only appreciated the value of the award but were determined to have its full benefits go to the employees. And it is safe to say that with few exceptions a unanimous vote signified an answer in some measure favorable to the employees.

It is gratifying to note that in only five cases the Board was unable to reach a conclusion, because it stood evenly divided. Two of the questions involved the identical proposition; so that only four questions were really left unanswered. Of these only one can be said to be of substantial concern to the employees; and the failure to answer it must be admitted to work a denial to the employees of a benefit which the neutral members of the Board could hardly have had in mind when the award was made.

Forty questions were answered by a majority vote. Thirty-four were decided by a vote of four to two, and six by a vote of five to one—the representatives of the railroads disagreeing in these five cases and furnishing the only instances in which the representatives of the railroads and the employees did not vote together. The neutrals were of course divided only upon the five unanswered questions. Of the forty questions answered by a mere majority vote, thirty were decided in favor of the employees and ten in favor of the railroads; and it is betraying no confidence to add, that in a number of these forty cases the losing side was neither surprised nor shocked at the result.

Upon the face of such a record perhaps the most apparent and also welcome impression is the virtual absence of partisanship. While the spirit of advocacy which had characterized many of the original sessions, was not wanting, nevertheless a determination to deliberate and to reach rational conclusions was manifest throughout and proved of the greatest assistance to the neutrals, where they were called upon to give the deciding votes.

Equally significant, however, is the proof which these questions furnish of the intrinsic value of the award to the employees. The saving clause in the agreement to arbitrate protected the employees against the loss of any rate or rule which they had. Not one of the 194 questions presented by them could therefore be directed to ascertain whether the award had deprived the employees of anything. All the questions were meant to find out what advantages had been or could be secured for them. Clearly the men who do the work did think that they had secured something worth going after.

In fact, so numerous, and in some cases so unique were the suggestions of combinations of old rules and new rates and vice versa, so endless the claims for subdivisions of rules or rates to lay the foundation for new combinations, that the conservatism which the saving clause had inspired in making the award, was most emphatically confirmed. On the other hand, that same saving clause now bore fruit. As its broad provisions had induced conservatism, it now necessitated liberal construction. This explains why the interpretations in so large a majority of cases resulted favorably to the men; although it by no means proves that the employees would not have fared even better, if they had not had a saving clause of any kind to restrain the arbitrators.

An arbitrator is not in a position to give advice; but perhaps his interest in work which has for many months engrossed his attention may entitle him to express the hope that both parties to the award may now take steps to have that award applied in the spirit in which it was made and interpreted. That a very substantial advance has been made cannot longer be doubted; and that there are always some men in positions of power on either side whose activities are calculated to prove the best rule of conduct unworkable; and that the work which has been accomplished should not be wrecked because of the blunders of mere sticklers for form or searchers for technical preference is too clear to need discussion.

Accepting that only a beginning has been made and reaffirming that in a really satisfactory arbitration the railroads should be given a chance to present their side, is it unreasonable to ask that the award, such as it is,

be put to a fair and equitable test? Are not the managing committees of both sides, after the expenditure of so much money, time, and effort, justified and even called upon to demand of their respective members that good results shall not fail for lack of sane, fair and honest effort to have them triumph? In the best event there must be a limit to the work of arbitrators. The final test lies with the employees and the officers of the railroads. The decision rests with their ability and willingness to work together. It is confidently hoped and believed that the interpretations just announced have given every support and encouragement possible to rational co-operation, and have virtually dispensed with the need for further references to the Board of Arbitration.

**END OF
TITLE**